

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA
and the States of CALIFORNIA,
CONNECTICUT, FLORIDA,
ILLINOIS, MASSACHUSETTS,
MICHIGAN, NEW YORK, OHIO,
RHODE ISLAND, and TEXAS, and
the Government of PUERTO RICO,
ex rel., MSP WB, LLC, *ex rel.*, and
MICHAEL ANGELO, *ex rel.*,

Plaintiffs,

v.

STATE FARM MUT. AUTO. INS.
CO., *et al.*

Defendants.

No. 2:19-cv-12165-LJM-APP

Hon. Laurie J. Michelson

Mag. Judge Anthony P. Patti

**PROGRESSIVE DEFENDANTS' REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF THEIR SUPPLEMENTAL MOTION TO DISMISS**

The “Progressive Defendants”¹ (“Progressive”) respectfully request that the Court, in connection with their concurrently filed Supplemental Motion to Dismiss,

¹ The Progressive Defendants are: ASI Home Ins. Corp., ASI Lloyds, ASI Preferred Ins. Corp., ASI Select Auto Ins. Corp., ASI Select Ins. Corp., Blue Hill Specialty Ins. Co. Inc., Drive NJ Ins. Co., Mountain Laurel Assur. Co., National Continental Ins. Co., Progressive Advanced Ins. Co., Progressive Amer. Ins. Co., Progressive

take judicial notice of Exhibits A-F, true and correct copies of which are attached hereto, pursuant to Federal Rule of Evidence 201. The Court may take judicial notice of facts “not subject to reasonable dispute” in that they are either (1) “generally known within the . . . territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). A court must take judicial notice “if requested by a party and supplied with the necessary information.” Fed. R. Evid. 201(d). In ruling on a Rule 12(b)(6) motion, the Court “may consider materials in addition to the complaint if such materials are public records or are otherwise appropriate for the taking of judicial notice.” *Bailey v. City of Ann Arbor*, 860 F.2d 382, 386 (6th Cir. 2017) (citation omitted); *see also U.S. v. Ferguson*, 681 F.3d 826, 834 (6th Cir. 2012).

Exhibit A is a full list of Progressive subsidiaries, which was attached to Progressive Corporation’s most recent 10-K filing. The Court may take judicial

Bayside Ins. Co., Progressive Cas. Ins. Co., Progressive Classic Ins. Co., Progressive Cnty. Mut. Ins. Co., Progressive Direct Ins. Co., Progressive Express Ins. Co., Progressive Garden State Ins. Co., Progressive Gulf Ins. Co., Progressive HI Ins. Corp., Progressive Marathon Ins. Co., Progressive Max Ins. Co., Progressive Mi Ins. Co., Progressive Mountain Ins. Co., Progressive Northern Ins. Co., Progressive Northwestern Ins. Co., Progressive Paloverde Ins. Co., Progressive Preferred Ins. Co., Progressive Premier Ins. Co. of IL, Progressive Prop. Ins. Co., Progressive Security Ins. Co., Progressive Select Ins. Co., Progressive Southeastern Ins. Co., Progressive Specialty Ins. Co., Progressive Universal Ins. Co., Progressive West Ins. Co., and United Financial Cas. Co.

notice of this publicly available SEC filing. SEC filings are routinely judicially noticed. *See, e.g., In re Automotive Parts Antitrust Litig.*, No. 2:16-cv-03802-MOB-MKM, No. 2:16-cv-03803-MOB-MKM, 2017 WL 7689654, at *1 (E.D. Mich. May 5, 2017) (taking judicial notice of SEC filings).

Exhibits B-F are publicly available court filings, of which the Court may take judicial notice. *See, e.g., Gonzales v. City of Fostoria*, No. 3:13 CV 796, 2014 WL 99114, at *7 (N.D. Ohio Jan. 9, 2014) (taking judicial notice of municipal court's docket sheets, which established that the plaintiff had pleaded no contest, was subsequently found guilty, and had appealed those verdicts).

Exhibit	Source
B	<i>Bentivegna v. Ivanov et al.</i> , No. 50326/2016, Doc No. 38, Verdict Sheet (Kings Cnty. Sup. Ct. Aug. 1, 2018).
C	<i>Progressive Specialty Ins. Co. v. Ivanov et al.</i> , Doc. No. 1, Verified Complaint (Nassau Cnty. Sup. Ct. May 31, 2016).
D	<i>Progressive Specialty Ins. Co. v. Ivanov et al.</i> , Stipulation of Discontinuance (Nassau Cnty. Sup. Ct. Aug. 5, 2016).
E	<i>Progressive Specialty Ins. Co. v. Ivanov et al.</i> , Stipulation of Discontinuance (Nassau Cnty. Sup. Ct. Sept. 23, 2016).
F	<i>Progressive Specialty Ins. Co. v. Ivanov et al.</i> , Doc. No. 25, Declaratory Judgment (Kings Cnty. Sup. Ct. Feb. 14, 2019).

WHEREFORE, the undersigned request that the Court take judicial notice of the information in Exhibits A-F, true and correct copies of which are attached hereto.

Dated: December 15, 2021

Respectfully submitted,

/s/ Jordan S. Bolton

Jordan S. Bolton (P66309)

CLARK HILL PLC

151 S. Old Woodward Ave., Suite 200

Birmingham, MI 48009

Telephone: (248) 988-1839

Facsimile: (248) 988.2320

jbolton@clarkhill.com

David J. Farber

KING & SPALDING LLP

1700 Pennsylvania Ave., NW, Suite 200

Washington, DC 20006-4707

Telephone: (202) 737-0500

Facsimile: (202) 626-3737

dfarber@kslaw.com

Jeffrey S. Cashdan

Zachary A. McEntyre

Emily S. Newton

Timothy H. Lee

KING & SPALDING LLP

1180 Peachtree Street, NE, Suite 1600

Atlanta, GA 30309

Telephone: (404) 572-4600

Facsimile: (404) 572-5100

jcashdan@kslaw.com

zmcentyre@kslaw.com

enewton@kslaw.com

tlee@kslaw.com

Attorneys for Defendants:

ASI Home Ins. Corp.

ASI Lloyds

ASI Preferred Ins. Corp.

ASI Select Auto Ins. Corp.

ASI Select Ins. Corp.

Blue Hill Specialty Ins. Co. Inc.
Drive NJ Ins. Co.
Mountain Laurel Assur. Co.
National Continental Ins. Co.
Progressive Advanced Ins. Co.
Progressive Amer. Ins. Co.
Progressive Bayside Ins. Co.
Progressive Cas. Ins. Co.
Progressive Classic Ins. Co.
Progressive Cnty Mut. Ins. Co.
Progressive Direct Ins. Co.,
Progressive Express Ins. Co.,
Progressive Garden State Ins. Co.,
Progressive Gulf Ins. Co.,
Progressive HI Ins. Corp.,
Progressive Marathon Ins. Co.,
Progressive Max Ins. Co.,
Progressive Mi Ins. Co.,
Progressive Mountain Ins. Co.,
Progressive Northern Ins. Co.,
Progressive Northwestern Ins. Co.,
Progressive Paloverde Ins. Co.,
Progressive Preferred Ins. Co.,
Progressive Premier Ins. Co. of IL,
Progressive Prop. Ins. Co.,
Progressive Security Ins. Co.,
Progressive Select Ins. Co.,
Progressive Southeastern Ins. Co.,
Progressive Specialty Ins. Co.,
Progressive Universal Ins. Co.,
Progressive West Ins. Co., and
United Financial Cas. Co.

Exhibit A

EX-21 8 pgr-20201231exhibit21.htm EX-21

Exhibit 21

SUBSIDIARIES OF THE PROGRESSIVE CORPORATION

Name of Subsidiary	Jurisdiction of Incorporation
ARX Holding Corp.	Delaware
American Strategic Insurance Corp.	Florida
Ark Royal Underwriters, LLC	Florida
ASI Assurance Corp.	Florida
ASI Home Insurance Corp.	Florida
ASI Lloyds, Inc.	Texas
ASI Preferred Insurance, Corp.*	Florida
ASI Select Auto Insurance Corp.	California
ASI Select Insurance Corp.	Delaware
ASI Services, Inc.	Florida
ASI Underwriters Corp.	Florida
ASI Underwriters of Texas, Inc.	Texas
e-Ins. LLC*	Florida
Progressive Property Insurance Company	Florida
PropertyPlus Insurance Agency, Inc.	Delaware
Sunshine Security Insurance Agency, Inc.	Florida
Drive Insurance Holdings, Inc.	Delaware
Drive New Jersey Insurance Company	New Jersey
Progressive American Insurance Company	Ohio
Progressive Bayside Insurance Company	Ohio
Progressive Casualty Insurance Company	Ohio
PC Investment Company	Delaware
Progressive Gulf Insurance Company	Ohio
Progressive Specialty Insurance Company	Ohio
Trussville/Cahaba, AL, LLC	Ohio
Progressive Classic Insurance Company	Wisconsin
Progressive Commercial Advantage Agency, Inc.	Ohio
Progressive Commercial Casualty Company	Ohio
Progressive Freedom Insurance Company	Ohio
Progressive Hawaii Insurance Corp.	Ohio
Progressive Michigan Insurance Company	Michigan
Progressive Mountain Insurance Company	Ohio
Progressive Northern Insurance Company	Wisconsin
Progressive Northwestern Insurance Company	Ohio
Progressive Preferred Insurance Company	Ohio
Progressive Security Insurance Company	Louisiana
Progressive Southeastern Insurance Company	Indiana
Progressive West Insurance Company	Ohio
Garden Sun Insurance Services, Inc.	Hawaii
Pacific Motor Club	California

*Wholly owned by ARX Holding Corp.; however, ownership is shared by one or more ARX Holding Corp. subsidiary. Subsidiary is reported under the majority owned parent.

Name of Subsidiary	Jurisdiction of Incorporation
Progn Agency, Inc.	New York
Progressive Adjusting Company, Inc.	Ohio
Progressive Capital Management Corp.	New York
Progressive Commercial Holdings, Inc.	Delaware
Artisan and Truckers Casualty Company	Wisconsin
Blue Hill Specialty Insurance Company, Inc.	Illinois
National Continental Insurance Company	New York
Progressive Express Insurance Company	Ohio
United Financial Casualty Company	Ohio
Progressive Direct Holdings, Inc.	Delaware
Mountain Laurel Assurance Company	Ohio
Progressive Advanced Insurance Company	Ohio
Progressive Advantage Agency, Inc.	Ohio
Progressive Auto Pro Insurance Agency, Inc.	Florida
Progressive Choice Insurance Company	Ohio
Progressive Direct Insurance Company	Ohio
Gadsden, AL, LLC	Ohio
Progressive Garden State Insurance Company	New Jersey
Progressive Marathon Insurance Company	Michigan
Progressive Max Insurance Company	Ohio
Progressive Paloverde Insurance Company	Indiana
Progressive Premier Insurance Company of Illinois	Ohio
Progressive Select Insurance Company	Ohio
Progressive Universal Insurance Company	Wisconsin
Progressive Investment Company, Inc.	Delaware
Progressive Life Insurance Company	Ohio
Progressive Premium Budget, Inc.	Ohio
Progressive RSC, Inc.	Ohio
Progressive Vehicle Service Company	Ohio
Village Transport Corp.	Delaware
Wilson Mills Land Co.	Ohio
358 Ventures, Inc.	Ohio

Exhibit B

At I.A.S. Part 94 of the Supreme Court of the State of New York held in and for the County of Kings, at the Courthouse, located at Civic Center, Borough of Brooklyn, City and State of New York on the 26th day of July 2018

PRESENT: Hon. Pamela L Fisher, JSC

Yolanda Bentivegna

Plaintiff(s)

Index No. 503236 2016

- against -

Mykhalo Ivanov and Anastasia Ivanova

Defendant(s)

This cause having been called for trial in its order on the Calendar, and six jurors having been duly drawn, empaneled and sworn to try the same, the jury comes into the Court on 26th day of July 2018, after a Bifurcated trial and say that they find a verdict as follows.

As to Liability

The the Defendant Anastasiya Ivanova was not negligent. (Unanimous)

Verdict for Defendant.

2018 AUG - 1 AM 7:41
KINGS COUNTY CLERK
FILED

(A TRUE EXTRACT OF THE MINUTES OF THE CASE)

COUNTY CLERK

Nancy T. Sunshine

by: Paul [Signature]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 94

YOLANDA BENTIVEGNA,

Index No. 503236/2016

Plaintiff,

-against-

VERDICT SHEETMYKHAYLO IVANOV and
ANASTASIYA IVANOVA,

Defendants.

QUESTION 1. WAS DEFENDANT ANASTASIYA IVANOVA NEGLIGENT?

(At least five must agree on the answer to this question)

YES _____ NO ☒JURORS WHO CONCUR IN ANSWERING THE ABOVE QUESTION WILL SIGN
THEIR NAMES BELOW:

1. [Signature]
2. [Signature]
3. [Signature]

4. [Signature]
5. [Signature]
6. [Signature]

I, THE UNDERSIGNED, DO NOT CONCUR IN THE ABOVE VERDICT.

INSTRUCTIONS: If your answer to Question #1 is "YES", please proceed to Question #2.
If your answer to Question #1 is "NO", please STOP and report your
verdict to the court.

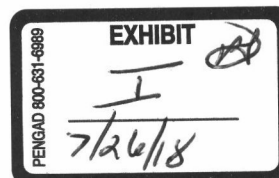


Exhibit C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU
PROGRESSIVE SPECIALTY INSURANCE COMPANY,

**VERIFIED
COMPLAINT**

Plaintiff,

Index No.:

-against-

MYKHAYLO IVANOV, ANASTAYSIYA IVANOVA,
YOLANDA BENTIVEGNA, BROOKLYN ANESTHESIA
RESEARCH, P.C., DANIEL W. WILEN, ORTHOPAEDIC
SURGERY, M.D., P.C., HAMILTON PARK NURSING AND
REHAB, LUTHERAN MEDICAL CENTER, METROPOLITAN
JEWISH HOME CARE, INC., NES MEDICAL SERVICES OF
NEW YORK, P.C., NEW YORK CITY HEALTH AND
HOSPITALS CORPORATION, NYU ANESTHESIA
ASSOCIATES, NYU LUTHERAN ASSOCIATES, QUANTUM
MEDICAL RADIOLOGY OF CALIFORNIA, PC and
SENIORCARE EMERGENCY MEDICAL SERVICES, INC.,

Defendants.

Plaintiff (hereinafter “Progressive” or “Plaintiff”) by its counsel McCORMACK &
MATTEI, P.C., for its Verified Complaint to obtain judgment declaring the rights and legal
relations of the parties to this action states as follows:

INTRODUCTION

1. This is an action for a declaratory judgment pursuant to CPLR § 3017(b) defining
and declaring the rights, duties, obligations and legal relationships by and between the within
named parties.
2. Plaintiff seeks a declaration that Plaintiff is not obligated to provide insurance
coverage with respect to the subject claim based on the non-involvement of its insured in the
alleged claim by a pedestrian.

3. Plaintiff also seeks **reimbursement** for all monetary damages, together with the costs and disbursements of this action, from all Defendants, jointly and severally, except for MYKHAYLO IVANOV, ANASTAYSIYA IVANOVA, such amount shall be determined at inquest.

4. Plaintiff issued an insurance policy to MYKHAYLO IVANOV covering a 2013 Honda (hereinafter “Progressive Vehicle”) under policy number 905775167 (hereinafter “Policy”).

5. The Policy provides liability coverage for bodily injury and property damage claims brought against covered persons, mandatory personal injury protection for eligible persons (hereinafter “no-fault benefits”) and uninsured motorist coverage to Insurance Law 3420 (f) (1) as a result of an accident.

PARTIES

6. Plaintiff is a foreign corporation authorized to do insurance business in the State of New York, maintaining offices in the County of Nassau, State of New York.

7. Upon information and belief, at all times pertinent herein, the defendant, MYKHAYLO IVANOV, was an individual residing in the City of Pittsburgh, State of Pennsylvania.

8. Upon information and belief, at all times pertinent herein, the defendant, ANASTAYSIYA IVANOVA, was an individual residing in the County of Richmond, State of New York.

9. Upon information and belief, at all times pertinent herein, the defendant, YOLANDA BENTIVEGNA, was an individual residing in the County of Kings, State of New York.

10. Upon information and belief, at all times pertinent herein, defendants BROOKLYN ANESTHESIA RESEARCH, P.C., DANIEL W. WILEN, ORTHOPAEDIC SURGERY, M.D., P.C. and NES MEDICAL SERVICES OF NEW YORK, P.C. were domestic professional corporations organized and existing under the laws of the State of New York.

11. Upon information and belief, at all times pertinent herein, defendants HAMILTON PARK NURSING AND REHAB, LUTHERAN MEDICAL CENTER, NEW YORK CITY HEALTH AND HOSPITALS CORPORATION, NYU ANESTHESIA ASSOCIATES and NYU LUTHERAN ASSOCIATES were licensed medical professionals who transacted business in the State of New York.

12. Upon information and belief, at all times pertinent herein, defendant METROPOLITAN JEWISH HOME CARE, INC. was a domestic not-for-profit corporation organized and existing under the laws of the State of New York.

13. Upon information and belief, at all times pertinent herein, defendant QUANTUM MEDICAL RADIOLOGY OF CALIFORNIA, PC was a foreign business corporation that transacted business in the State of New York.

14. Upon information and belief, at all times pertinent herein, defendant SENIORCARE EMERGENCY MEDICAL SERVICES, INC., was a domestic business corporation organized and existing under the laws of the State of New York.

VENUE

15. The basis for venue is the residence of the Plaintiff, which maintains an office within Nassau County.

AS AND FOR A FIRST CAUSE OF ACTION

16. Defendant, YOLANDA BENTIVEGNA, a pedestrian, caused herself to lay on the ground on December 23, 2015 at the intersection of 86th Street and Bay 29th Street, Brooklyn, New York.

17. However, Defendant, YOLANDA BENTIVEGNA claimed to Plaintiff to have sustained injuries on December 23, 2015 at the intersection of 86th Street and Bay 29th Street, Brooklyn, New York as a result of contact with the Progressive Vehicle.

18. The Progressive Vehicle was operated by ANASTAYSIA IVANOVA in the vicinity of the intersection of 86th Street and Bay 29th Street, Brooklyn, New York on December 23, 2015. However, at no time did the Progressive Vehicle come into contact with Defendant YOLANDA BENTIVEGNA for this loss.

19. Progressive's investigation of this loss revealed that YOLANDA BENTIVEGNA is the sole source for the claimed contact with the Progressive Vehicle for this loss. An Examination Under Oath of YOLANDA BENTIVEGNA conducted on 4/1/16 revealed that she was unable to describe who she spoke to after the alleged incident, who called the police/ambulance, whether she even saw the Progressive Vehicle operator, and whether she even gave a statement to the police officers. YOLANDA BENTIVEGNA claimed that as a result of the contact, she "flew 10 feet" and landed on her side which is inconsistent with the low level of treatment she claimed to have received from the hospital. Furthermore, Progressive's investigation also revealed that YOLANDA BENTIVEGNA had sustained injuries in two prior slip and fall incidents on 6/28/04 and 8/20/00. When questioned specifically about these dates, YOLANDA BENTIVEGNA denied having slipped and fallen during those two dates and claimed that she has never slipped and fallen before.

20. At her 4/4/16 EUO, ANASTAYSIA IVANOVA testified that no contact occurred between the Progressive Vehicle and YOLANDA BENTIVEGNA, and that YOLANDA BENTIVEGNA slowly lowered her body in front of the vehicle.

21. ANASTAYSIA IVANOVA's account was corroborated by two eye-witnesses, Vito Serini and Yan Yiong Liu, both of whom said they had a clear view of the incident and both specified that YOLANDA BENTIVEGNA fell about two feet away from and in front of the Progressive Vehicle.

22. The underlying incident of December 23, 2015 did not arise out of the use or operation of a motor vehicle and thus defendant YOLANDA BENTIVEGNA is not considered an eligible injured person under the Policy. The relevant portions of the Policy state as follows:

**PART II (A) –PERSONAL INJURY PROTECTION COVERAGE
SECTION I: MANDATORY PERSONAL INJURY PROTECTION
ENDORSEMENT**

The company will pay first-party benefits to reimburse for basic economic loss sustained by an eligible injured person on account of personal injuries caused by an accident arising out of the use or operation of a motor vehicle. . .

Eligible Injured Person

Subject to the exclusions and condions set forth below, an eligible injured person is:

- (a) the named insured and any relative who sustains personal injury arising out of the use or operation of any motor vehicle

23. For the 12/23/15 loss, PROGRESSIVE received numerous requests for no-fault reimbursement for services claimed to have been rendered to YOLANDA BENTIVEGNA by Defendants BROOKLYN ANESTHESIA RESEARCH, P.C., DANIEL W. WILEN, ORTHOPAEDIC SURGERY, M.D., P.C., HAMILTON PARK NURSING AND REHAB, LUTHERAN MEDICAL CENTER, METROPOLITAN JEWISH HOME CARE, INC., NES MEDICAL SERVICES OF NEW YORK, P.C., NEW YORK CITY HEALTH AND

HOSPITALS CORPORATION, NYU ANESTHESIA ASSOCIATES, NYU LUTHERAN ASSOCIATES, QUANTUM MEDICAL RADIOLOGY OF CALIFORNIA, PC and SENIORCARE EMERGENCY MEDICAL SERVICES, INC.

24. As a result of the aforesaid conduct, Plaintiff is entitled to a declaration that Plaintiff has no contractual duty to provide coverage for any claims of bodily injury, no-fault and/or uninsured motorist coverage made by Defendant YOLANDA BENTIVEGNA or on her behalf by virtue of assignment of benefits to any of the other defendants as the claimed injuries did not arise from the use or operation of a motor vehicle.

AS AND FOR A SECOND CAUSE OF ACTION

25. Plaintiff repeats, reiterates and realleges each and every allegation contained in all prior paragraphs as if set forth fully herein

26. The Policy only covers “accidents” not claims of injury resulting from intentional acts. By virtue of the fact that Defendant YOLANDA BENTIVEGNA, if injured, brought those injuries upon herself by her own acts, the following pertinent policy exclusions apply:

PART 1 – LIABILITY TO OTHERS

EXCLUSIONS

(9) Bodily injury or property damage caused by intentional act other than insured person or at the direction of any insured person

PART 2 (A) PERSONAL INJURY PROTECTION COVERAGE EXCLUSIONS

3. To any person whose conduct contributed to his or her own bodily injury:

(a) Intentionally causing bodily injury to himself or herself

27. As a result of the aforesaid conduct, Plaintiff is entitled to a declaration that Plaintiff has no contractual duty to provide coverage for any claims of bodily injury, no-fault and/or uninsured motorist claims made by Defendant YOLANDA BENTIVEGNA or on her behalf by virtue of assignment of benefits to any of the other defendants.

28. Plaintiff has no adequate remedy at law.

AS AND FOR A THIRD CAUSE OF ACTION

29. Plaintiff repeats, reiterates and reallages each and every allegation contained in all prior paragraphs as if set forth fully herein.

30. The terms of the policy include:

Fraud or Misrepresentation

We may cancel this policy and deny coverage under this policy at any time, including after the occurrence of an accident or loss, if you:

1. Made incorrect statements or representations to us with regard to any material fact or circumstance;

2. Concealed or misrepresented any material fact or circumstance or;

3. Engaged in fraudulent conduct;

At the time of application, or in connection with the presentation or settlement of a claim.

31. Defendant YOLANDA BENTIVEGNA materially misrepresented the facts and circumstances of the underlying incident of December 23, 2015 with the intent to induce Plaintiff to afford coverage and ultimately pay benefits to the defendant and the defendant's assignees.

32. Defendant YOLANDA BENTIVEGNA made false statements with the purpose and intent of deceiving and defrauding Plaintiff, to induce Plaintiff to provide liability coverage, to pay bodily injury insurance proceeds and to afford no-fault and uninsured motorist benefits.

33. Plaintiff justifiably relied upon statements of defendant YOLANDA BENTIVEGNA, thereby suffering pecuniary loss arising out of the handling, adjusting and investigation and defense of the claims.

34. Defendant YOLANDA BENTIVEGNA knew the statements were false when made.

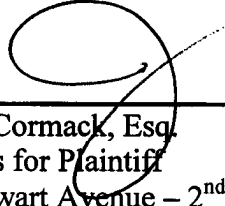
35. As a result of the aforesaid conduct, Plaintiff is entitled to a declaration that Plaintiff has no contractual duty to provide coverage for any claims of bodily injury, no-fault and/or uninsured motorist claims made by Defendant YOLANDA BENTIVEGNA or on her behalf by virtue of assignment of benefits to any of the other defendants.

36. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff respectfully requests a judgment against defendants on the First, Second and Third causes of action for a declaration that Plaintiff has no contractual duty to provide coverage for any claims of bodily injury, no-fault and/or uninsured motorist claims made by Defendant YOLANDA BENTIVEGNA or on her behalf by virtue of assignment of benefits to any of the other defendants arising from the claimed loss of 12/23/15, that Plaintiff shall receive reimbursement for all monetary damages, together with the costs and disbursements of this action, from all Defendants, jointly and severally, except for MYKHAYLO IVANOV, ANASTAYSIYA IVANOVA, such amount shall be determined at inquest, and such other and further relief as this Court may deem just and proper, including the costs and disbursements of this action.

Dated: Garden City, New York
May 31, 2016

McCORMACK & MATTEI, P.C.

By: 
John McCormack, Esq.
Attorneys for Plaintiff
1035 Stewart Avenue – 2nd Floor and 3rd Floor
Garden City, New York 11530
(516) 505-0600 Ext. 221
T-1757.dj

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

ELAINE CONLEY, being duly sworn, deposes and says:

Deponent is employed by PROGRESSIVE CASUALTY INSURANCE COMPANY, a corporation responsible for the administration of the claims in the within action, and has read the foregoing Complaint and knows the contents thereof. That the same is true to deponent's own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true. This verification is made by deponent because Plaintiff is a corporation, and deponent is a representative thereof.

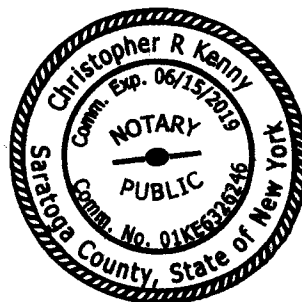
The grounds of deponent's belief as to all matters not stated upon deponent's general knowledge are upon information and belief.

PROGRESSIVE CASUALTY INSURANCE COMPANY

BY: 
ELAINE CONLEY

Sworn to before me this
31st day of May 2016


NOTARY PUBLIC



**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

Index No.:

PROGRESSIVE SPECIALTY INSURANCE COMPANY,

Plaintiff(s),

-against-

IVANOV, et al.

Defendants.

SUMMONS AND VERIFIED COMPLAINT

MCCORMACK & MATTEI, P.C.

Attorneys at Law

Attorneys for PLAINTIFF

Office and Post Office Address, Telephone

1035 Stewart Avenue

Garden City, New York 11530

(516) 505-0600

To

Attorney(s) for Defendant

Service of a copy of the within ^ is hereby admitted

Dated,

^

.....
Attorney(s) for ^

Please take notice

☐ Notice of entry

that the within is a (*certified*) true copy of a
duly entered in the office of the clerk of the within named court on

☐ Notice of Settlement

that an order ^ of which the within is a true copy will be presented for ^ settlement to the HON. ^ one of the judges
of the within named court, at ^

on ^

Dated,

^

To ^

Attorney(s) for ^

Yours, etc.

MCCORMACK & MATTEI, P.C.

Attorneys at Law

Attorneys for

Office and Post Office Address

1035 Stewart Avenue

Garden City, New York 11530

(516) 505-0600

16--004050

NASSAU INDEX # _____ 20__
FILED
JUN 02 2016
COUNTY CLERK OF
NASSAU COUNTY

Exhibit D

Nassau County
 Maureen O'Connell
 County Clerk
 Mineola, NY 11501



63 2016 00181122

Ref ID#: IN 16 004050

Instrument Number: 2016- 00181122

As

C32 - STIPULATION OF DISCONTINUANCE

Recorded On: August 05, 2016

Parties: PROGRESSIVE SPECIALTY INSURANCE CO

TO MYKHAYLO IVANOV

Num Of Pages:

Recorded By: MCCORMACK MATTEI P C

Comment:

** Examined and Charged as Follows: **

C32 - STIPULATION OF DISCONT 35.00

Recording Charge: 35.00

** THIS PAGE IS PART OF THE INSTRUMENT **

I hereby certify that the within and foregoing was recorded in the Clerk's Office For: Nassau County, NY

File Information:

Record and Return To:

Document Number: 2016- 00181122

Receipt Number: 351316

Recorded Date/Time: August 05, 2016 03:09:11P

Book-Vol/Pg:

Cashier / Station: 0 AAJ / NCCL-JCQWBP1



Maureen O'Connell

County Clerk Maureen O'Connell

Aug. 5. 2016 12:15PM

No. 2350 P. 2

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

-----X
PROGRESSIVE SPECIALTY INSURANCE COMPANY,

Plaintiff,

-against-

**STIPULATION OF
DISCONTINUANCE AS TO
DEFENDANT DANIEL W.
WILEN ONLY**

Index: 4050/16


**MYKHAYLO IVANOV, ANASTAYSIYA IVANOVA,
YOLANDA BENTIVEGNA, BROOKLYN ANESTHESIA
RESEARCH, P.C., DANIEL W. WILEN, ORTHOPAEDIC
SURGERY, M.D., P.C., HAMILTON PARK NURSING AND
REHAB, LUTHERAN MEDICAL CENTER, METROPOLITAN
JEWISH HOME CARE, INC., NES MEDICAL SERVICES OF
NEW YORK, P.C., NEW YORK CITY HEALTH AND
HOSPITALS CORPORATION, NYU ANESTHESIA
ASSOCIATES, NYU LUTHERAN ASSOCIATES, QUANTUM
MEDICAL RADIOLOGY OF CALIFORNIA, PC and
SENIORCARE EMERGENCY MEDICAL SERVICES, INC.,**

Defendants.

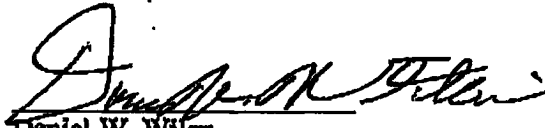
-----X
IT IS HEREBY STIPULATED AND AGREED by and between the undersigned that
DANIEL W. WILEN hereby withdraws with prejudice all claims for personal injury, UIM
benefits and no-fault benefits arising from the loss of 12/23/15 at the intersection of 86th Street
and Bay 29th Street, Brooklyn, New York under an insurance policy issued by Plaintiff to
MYKHAYLO IVANOV and whereas no party hereto is an infant, incompetent person for
whom a committee has been appointed and no person not a party has interest in the subject
matter of the action, the above entitled action is discontinued with prejudice against DANIEL W.
WILEN only, without costs to either party as against the other.

This stipulation may be filed without further notice to the Clerk of the Court. Facsimiles
may be deemed originals and may be signed in counterparts.

Dated: Garden City, New York
August 5, 2016



Florina Malakh, Esq.
McCORMACK & MATTEI, P.C.
Attorneys for Plaintiff
1035 Stewart Avenue, 2nd & 3rd Floor
Garden City, New York 11530
(516) 505-0600
File No.: T-1757.dj



Daniel W. Wilen
DANIEL W. WILEN, ORTHOPAEDIC
SURGERY, M.D., P.C.
9202 FT HAMILTON PKWY
BROOKLYN, NEW YORK, 11209

Aug. 5. 2016 12:15PM

No. 2350 P. 3

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

Index No.: 4050/16

PROGRESSIVE SPECIALTY INSURANCE COMPANY,

Plaintiff(s),

-against-

MYKHAYLO IVANOV, et al.

Defendants.

**STIPULATION OF DISCONTINUANCE AS TO DEFENDANT DANIEL W. WILEN
ONLY**

MCCORMACK & MATTEI, P.C.
Attorneys at Law
Attorneys for PLAINTIFF
Office and Post Office Address, Telephone
1035 Stewart Avenue
Garden City, New York 11530
(516) 505-0600

To

Attorney(s) for Defendant

Service of a copy of the within ^ is hereby admitted
Dated,

^

Attorney(s) for ^

Please take notice

☐ Notice of entry

that the within is a (*certified*) true copy of a
duly entered in the office of the clerk of the within named court on

☐ Notice of Settlement

that an order ^ of which the within is a true copy will be presented for ^ settlement to the HON. ^ one of the judges
of the within named court, at ^

on ^
Dated,

^

To ^

Attorney(s) for ^

Yours, etc.
MCCORMACK & MATTEI, P.C.
Attorneys at Law
Attorneys for
Office and Post Office Address
1035 Stewart Avenue
Garden City, New York 11530
(516) 505-0600

Exhibit E

Nassau County
Maureen O'Connell
County Clerk
Mineola, NY 11501



63 2016 00218091

Ref ID#: IN 16 004050

Instrument Number: 2016- 00218091

As

C32 - STIPULATION OF DISCONTINUANCE

Recorded On: September 26, 2016

Parties: PROGRESSIVE SPECIALTY INSURANCE CO

TO MYKHAYLO IVANOV

Num Of Pages:

Recorded By: MCCORMACK

Comment:

**** Examined and Charged as Follows: ****

C32 - STIPULATION OF DISCONT 35.00

Recording Charge: 35.00

**** THIS PAGE IS PART OF THE INSTRUMENT ****

I hereby certify that the within and foregoing was recorded in the Clerk's Office For: Nassau County, NY

File Information:

Record and Return To:

Document Number: 2016- 00218091

Receipt Number: 403692

Recorded Date/Time: September 26, 2016 02:46:43P

Book-Vol/Pg:

Cashier / Station: 0 AKK / NCCL-JCTXBP1



Maureen O'Connell

County Clerk Maureen O'Connell

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

-----X
PROGRESSIVE SPECIALTY INSURANCE COMPANY,

Plaintiff,

-against-

**STIPULATION OF
DISCONTINUANCE AS TO
METROPOLITAN JEWISH.
HOME CARE, INC ONLY**

Index: 004050/16

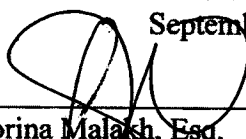
MYKHAYLO IVANOV, ANASTAYSIYA IVANOVA,
YOLANDA BENTIVEGNA, BROOKLYN ANESTHESIA
RESEARCH, P.C., DANIEL W. WILEN, ORTHOPAEDIC
SURGERY, M.D., P.C., HAMILTON PARK NURSING AND
REHAB, LUTHERAN MEDICAL CENTER, METROPOLITAN
JEWISH HOME CARE, INC., NES MEDICAL SERVICES OF
NEW YORK, P.C., NEW YORK CITY HEALTH AND
HOSPITALS CORPORATION, NYU ANESTHESIA
ASSOCIATES, NYU LUTHERAN ASSOCIATES, QUANTUM
MEDICAL RADIOLOGY OF CALIFORNIA, PC and
SENIORCARE EMERGENCY MEDICAL SERVICES, INC.,

Defendants.

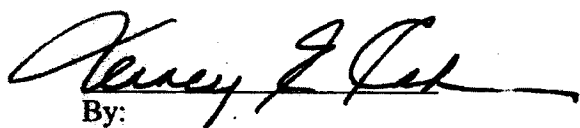
-----X
IT IS HEREBY STIPULATED AND AGREED by and between the undersigned that
METROPOLITAN JEWISH HOME CARE, INC. hereby withdraws with prejudice all claims for
personal injury, UIM benefits and no-fault benefits arising from the loss of 12/23/15 at the
intersection of 86th Street and Bay 29th Street, Brooklyn, New York under an insurance policy
issued by Plaintiff to MYKHAYLO IVANOV and whereas no party hereto is an infant,
incompetent person for whom a committee has been appointed and no person not a party has
interest in the subject matter of the action, the above entitled action is discontinued with prejudice
against METROPOLITAN JEWISH HOME CARE, INC. only, without costs to either party as
against the other.

This stipulation may be filed without further notice to the Clerk of the Court. Facsimiles
may be deemed originals and may be signed in counterparts.

Dated: Garden City, New York
September 23, 2016



Florina Malakh, Esq.
McCORMACK & MATTEI, P.C.
Attorneys for Plaintiff
1035 Stewart Avenue, 2nd & 3rd Floor
Garden City, New York 11530
(516) 505-0600 x 230
File No.: T-1757.dj


By: _____
METROPOLITAN JEWISH HOME
CARE, INC.
6323 SEVENTH AVENUE
BROOKLYN, NEW YORK, 11220

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

Index No.: 004050/16

PROGRESSIVE SPECIALTY INSURANCE COMPANY,

Plaintiff(s),

-against-

MYKHAYLO IVANOV, et al.

Defendants.

**STIPULATION OF DISCONTINUANCE AS TO DEFENDANT METROPOLITAN
JEWISH HOME CARE, INC. ONLY**

MCCORMACK & MATTEI, P.C.
Attorneys at Law
Attorneys for **PLAINTIFF**
Office and Post Office Address, Telephone
1035 Stewart Avenue
Garden City, New York 11530
(516) 505-0600

To

Attorney(s) for Defendant

Service of a copy of the within ^ is hereby admitted

Dated,

^

.....
Attorney(s) for ^

Please take notice

☐ Notice of entry

that the within is a (*certified*) true copy of a
duly entered in the office of the clerk of the within named court on

☐ Notice of Settlement

that an order ^ of which the within is a true copy will be presented for ^ settlement to the HON. ^ one of the judges
of the within named court, at ^

on ^

Dated,

^

To ^

Attorney(s) for ^

Yours, etc.

MCCORMACK & MATTEI, P.C.

Attorneys at Law

Attorneys for

Office and Post Office Address

1035 Stewart Avenue

Garden City, New York 11530

(516) 505-0600

Exhibit F

At IAS Part 9 of the Supreme Court of
the State of New York in and for the
County of Kings, at the
Courthouse, located at 360 Adams
Street, Brooklyn, New York, County of
Kings, State of New York on
the 14th day of February, 2019.

PRESENT:

Hon. Debra Silber,
Justice

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

PROGRESSIVE SPECIALTY INSURANCE COMPANY,

Plaintiff,

-against-

MYKHAYLO IVANOV, ANASTAYSIYA IVANOVA,
YOLANDA BENTIVEGNA, BROOKLYN ANESTHESIA
RESEARCH, P.C., DANIEL W. WILEN, ORTHOPAEDIC
SURGERY, M.D., P.C., HAMILTON PARK NURSING AND
REHAB, LUTHERAN MEDICAL CENTER, METROPOLITAN
JEWISH HOME CARE, INC., NES MEDICAL SERVICES OF
NEW YORK, P.C., NEW YORK CITY HEALTH AND
HOSPITALS CORPORATION, NYU ANESTHESIA
ASSOCIATES, NYU LUTHERAN ASSOCIATES, QUANTUM
MEDICAL RADIOLOGY OF CALIFORNIA, PC and
SENIORCARE EMERGENCY MEDICAL SERVICES, INC.,

Defendants.

DECLARATORY
JUDGMENT

Index No.: 518199/16

ms #3

Plaintiff, PROGRESSIVE SPECIALTY INSURANCE COMPANY, having
moved this Court for an Order granting **judgment on default** pursuant to CPLR § 3215
as to Defendants

BROOKLYN ANESTHESIA RESEARCH, P.C., LUTHERAN
MEDICAL CENTER, NES MEDICAL SERVICES OF NEW YORK,
P.C., NYU ANESTHESIA ASSOCIATES, NYU LUTHERAN
ASSOCIATES, QUANTUM MEDICAL RADIOLOGY OF
CALIFORNIA, PC and SENIORCARE EMERGENCY MEDICAL
SERVICES, INC.,

and for such other and further relief as this Court may deem just and proper,

The Notice of Motion dated Dec. 6, 2018, Re affirmation in support dated Dec 6, 2018 and exhibits attached included
NOW upon the reading and filing of the Plaintiff's Notice of Motion, dated July

7, 2017, together with the Affirmation in Support dated July 7, 2017, the Affidavit of

Elaine Conley, dated May 19, 2017, and all exhibits annexed thereto, and there being no

opposition thereto, and this Motion having been duly heard on *February 14, 2019* ~~September 14, 2017~~, and

there being an Order of Honorable Devin P. Cohen, dated September 14, 2017, and

entered with the Clerk of this Court on September 14, 2017, with service of said Order

with notice of its entry duly served by Plaintiff upon Defendants on October 2, 2017, is

hereby

DECLARED,

ADJUDGED and DECREED that, with respect to the defaulting defendants, the

subject policy **** is null and void with respect to the subject loss of December 23, 2015;

Plaintiff is under no obligation to provide liability coverage with respect to the subject

loss, Plaintiff has no duty to defend or indemnify the defaulting defendants with respect

to the subject loss in any pending or future actions that have been or may be brought as a

result of the subject loss, Plaintiff has no duty to provide coverage for claims for no-fault

or uninsured motorist benefits made by or on behalf of any of the defaulting defendants

in connection with the subject loss and Plaintiff has waived any monetary damages it may

have been entitled to with respect to the defaulting Defendants.

This action has previously been discontinued as against the other defendants.
ENTER:

*** Insuring as Ivanov and Ivanova*

do
Hon. Debra Silber, J.S.C.

Hon. Debra Silber
Justice Supreme Court

NANCY T. SUNSHINE
Clerk

Nancy T. Sunshine
* BROOKLYN ANESTHESIA RESEARCH, P.C., LUTHERAN MEDICAL CENTER, NES MEDICAL SERVICES OF NEW YORK, P.C., NYU ANESTHESIA ASSOCIATES, NYU LUTHERAN ASSOCIATES, QUANTUM MEDICAL RADIOLOGY OF CALIFORNIA, PC and SENIORCARE EMERGENCY MEDICAL SERVICES, INC.,